IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

W.P.NO.2245 OF 2005

Shri.Nagnarayan Saryu Singh]
Age 60 yrs.]
Residing at Shital Nagar]
Marve Road, Malad (West)]
Mumbai]..Petitioner

Vs.

1. Shri.A.N.Roy]
Commissioner of Police]
Greater Mumbai]
]
2. The State of Mah.]
Through Secretary,]
Home Deptt. (Appeal &]
Security), Mantralaya]
Mumbai]
]
3. The Superintendent,]
Nasik Road Central]
Prison, Nasik]..Respondents

....

Mr.U.N.Tripathi Advocate for Petitioner
Mrs.A.S.Pai A.P.P. for Respondents

....

CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.

DATE : MAY 05, 2006

ORAL JUDGMENT:(PER SMT.V.K.TAHILRAMANI,J):

1. Through this petition, the petitioner-detenu has impugned the order of detention dated 22.6.2005

passed by Respondent No.1 Shri.A.N.Roy, Commissioner of Police Greater Mumbai. By the said order, the detenu came to be detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons, Act, 1981 (Hereinafter referred to as "M.P.D.A.Act") as he is a slumlord.

2. A perusal of the grounds of detention, shows that the impugned order is founded on one C.R. i.e. C.R.No.5 of 2005 and four incamera statements. The said crime is under Section 3 Z-2(6) of the Maharashtra Slum Area (Improvement Clearance and Redevelopment) Act, 1971.

3. Brief facts relating to C.R.No.5 of 2005 are that:

. Unauthorised hutments were constructed on Government land on City Survey No. 263 which was demolished on 2.12.2004 by the Staff of Encroachment and Demolition squad. However, again the unauthorised hutments were constructed on the said land which were demolished again on 17.1.2005. The detenu had constructed unauthorised hutments on

Government land so also, he was provoking others to construct unauthorised hutments on the said vacant Government land. Hence, complaint came to be filed against the detenu.

4. Besides the above C.R., the order of detention is based on four incidents which have been stated by incamera witnesses A to D. We do not think it necessary to go into the details of the said CR or the incidents referred to by the incamera witnesses in order to decide the present petition suffice to say that the incamera witnesses have stated about the activities of the petitioner which are prejudicial to maintenance of public order.

5. We have heard Mr.Tripathi, the learned counsel for the Petitioner-detenu and Mrs.Pai the learned A.P.P. for the State. Although, in this petition, many grounds have been pleaded, Mr.Tripathi has pressed only three grounds i.e. ground Nos. B, D and I.

. Ground No.B reads as under:

. "B. The Petitioner says and submits that five copies of the representations of detenu were forwarded to the Hon’ble

> Advisory Board and the State Government through the Thane Central Prison, Thane on 7.7.2005 also addressed to the State Government for revocation of the order of detention. The Petitioner received a communication dated 17.08.2005 informing him that the said representation of the petitioner is rejected, thereby the State Government has delayed in considering the representation of the detenu. The State Government also did not consider the representation of the detenu independently and expeditiously. The said authority is called upon to explain the above said delay to the satisfaction of this Honourable Court failing which the continued detention will be held illegal and unconstitutional. The concerned Jail authority did not forward the copies of representation to other authority. The order of detention is illegal and bad in law, ought to be quashed and set aside.

6. Mr.Tripathi submitted that five copies of the representation were handed over to the jail authorities on 7.7.2005 by the learned Advocate for the detenu. The said representations were addressed to the State Government and the Advisory Board. Mr.Tripathi submitted that though three copies of the representations were addressed to the Advisory Board, the same were not sent by jail authorities to the Advisory Board and consequently, non-consideration of the same by the Advisory Board would make the continued detention illegal.

7. As far as the copy of the representation being forwarded to the State Government, there is no grievance made by Mr.Tripathi before us that the said representation was not expeditiously considered. His only grievance is that copy of the representation was not forwarded by the jail authorities to the Advisory Board.

8. The above ground has been replied by the jailor Mr.Sheshrao B.Chawre in para no.2 of his affidavit affirmed on 15.4.2006. In the said affidavit, it is stated that on 7.7.2005 advocate of the detenu on the letter head forwarded copies of representation to be forwarded to the said authorities, however, on the same day, son of detenu by name Santosh Nagnarayan Singh took away four copies out of the five copies which were handed over to the jailor on the ground that same would be personally handed over by him before the Advisory Board. The signature of the son of the detenu, has been obtained by the jail authorities by way of acknowledgement of him having received the said four copies of the representation. It was under these circumstances that the copies of the representations were not forwarded to the Advisory

Board by the jail authorities.

9. Mr.Tripathi has admitted that Santosh Nagnarayan Singh is indeed son of the petitioner. He does not deny the relation. However, it is his contention that the jailor ought not to have returned the copies of the representation to the son of detenu. In our view such a stand cannot be taken by Mr.Tripathi. When the son of detenu made a request to the jail authorities, the jail authorities in all good faith, gave the copies of the representations as per the request of the son to him. Now Mr.Tripathi cannot contend that the jailor could not have done so and the jailor ought to have forwarded the copies of the representation to the Advisory Board.

10. We find that increasingly such tactics have been resorted to by the detenu or on his behalf in order to create confusion and they seek to take advantage of the confusion. The detenu cannot take advantage of their own wrong acts or wrong doings. In the present case, looking to the fact that son of the detenu had requested that the copies of the representation meant for the Advisory Board be

handed over to him by the jail authorities, no grievance can be raised by the petitioner that the jail authorities could not have done so. Thus, in such case, we find no merit in this ground.

11. The next ground i.e. ground 'I' relates to delay in issuance of detention order. The said ground is as under:

> . "I. The Petitioner says and submits that the incident of C.R.No.05/05 took place and case registered on 19.01.2005 and the incidents of four incamera statements have taken place in February, 2005 whereas the impugned order of detention came to be passed much belatedly on 22.06.2005 i.e. after a long lapse of about 4 months. The sponsoring authority is called upon to explain to this Honourable Court as to why not promptly and with sense of urgency the statements are recorded and why recorded in the last week of May, 2005. The order of detention is illegal on delay in issuance Court also. The order is liable to be quashed and set aside."

12. The said ground has been replied by the detaining authority in para 15 of his affidavit. In the affidavit, it is stated as under:

> . "15. With reference to para 6(I) of the petition, it is submitted that the complaint pertaining to Part VI CR No.05 of 2005 was registered on

19.1.2005. The detenu was arrested on 19.1.2005. After the arrest of the detenu further investigation was carried out.

. During the course of enquiry, it was learnt that even though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to reign of terror which was created by the detenu and his associates. It was only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed that- four witnesses came forward to give their statements, these statements were recorded on 24.5.2005, 25.5.2005, 26.5.2005 and 27.5.2005.

. Thereafter the Sponsoring Authority carefully went through all the material they had collected. They then prepared the necessary sets of documents by getting them typed, xeroxed etc. After the necessary sets of documents were ready, they submitted the same along with the proposal for the detention of the present detenu.

. It is stated that the proposal in this case was submitted on 30.5.2005. This proposal was forwarded through the proper channel. It was carefully considered and scrutinised by various authorities at various levels and thereafter the entire material was placed before me. I carefully examined all the material placed before me and after arriving at my subjective satisfaction that it was absolutely necessary to detain the detenu, I passed the order of detention on 22.6.2005. I say that the proposal and papers pertaining to the present detenu was forwarded to the various authorities. Hence, each authority at the different levels had to carefully

scrutinise the proposal and papers pertaining to the present detenu.

. It is submitted that the present proposal along with the accompanying papers was submitted as per the usual practice, first to the DCP Zone-XI, he carefully went through all the papers and gave his endorsement on 2.6.2005. It is stated that thereafter the papers came to be forwarded to the Senior Inspector of Police, PCB CID. He carefully went through all the papers and gave his endorsement on 3.6.2005. It is stated that the papers were thereafter forwarded to the Deputy Commissioner of Police (Preventive). The Deputy Commissioner of Police (Preventive) went through all the papers. He gave his endorsement thereon on 6.6.2005. It is stated that 5.6.2005 was holiday. Thereafter all the papers were forwarded to the Additional Commissioner of Police (Crime). He gave his endorsement after considering the proposal and all the papers on 7.6.2005. Thereafter, all the papers were put up before me.

. I say that the proposal and papers of the present detenu was perused by me and considered by me and I was of the opinion that it is a fit case for detaining the detenu hence, I gave approval to the said proposal on 10.6.2005. All the papers were then forwarded to the Sponsoring Authority for the purpose of fair typing, for preparing the translation of the documents in the language known to the Detenu and for preparing the necessary sets of documents etc.

. After completing all the necessary work in the matters i.e. typing, translation in Hindi language, the necessary sets of documents were received as per the procedure in the Office of Senior PI, PCB, CID. The

Senior Inspector of Police, P.C.B. C.I.D., Mumbai, checked all the documents and gave his endorsement on 21.6.2005. Thereafter the papers were forwarded to Deputy Commissioner of Police (Preventive). He went through all the papers and put his endorsement thereon 22.6.2005.

. I once again carefully went through the proposal and the papers accompanying the same and finalised the grounds of detention and contemporaneously issued the Order of Detention on 22.6.2005. Hence, time taken for considering the present proposal and issuing the order is reasonable. In view of the facts and circumstances of this case, it is denied that there is any delay in issuing the Order of Detention.

. Looking to the facts of this case, it cannot be said that the live link between the prejudicial activities and the Order of Detention is snapped. So also, it cannot be said that the incidents are stale and remote in point of time and/or the detention and grounds of detention are not proximate to the prejudicial activities of the detenu. In any event looking to the propensity and the potentiality of the detenu to indulge in similar prejudicial activities in future, it cannot be said that the live link is snapped or that the incidents have become stale. It is denied that the order of detention is illegal and the said order is issued belatedly. It is further denied that the order of detention be quashed and set aside. Thus, there is no substance in the say of the detenu in this para. It is stated that the part of the contents of the said para refers to the Sponsoring Authority, hence, the affidavit of the Sponsoring Authority may kindly be referred to.

13. In relation to delay the sponsoring authority in its reply, has stated thus:-

> "3. With specific reference to Paragraph No.6(I) of the petition, it is denied that there is any delay in issuing the order of detention. I say that the Externment Branch deals with all Externment matters, Chapter cases and Detention matters pertaining to the said police station. I say that the said Externment Branch consisted of the Externment Officer i.e. myself at the relevant time and three or maximum four other police staff which included Police Constables and Police Head Constable.
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> 4. During the course of enquiry, it was learnt that though many persons had suffered at the hands of the detenu, the witnesses were not willing to come forward to make any complaint openly against the detenu due to the feeling of fear which was created by the detenu. It was only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed, that four witnesses came forward to give their statements. These statements were recorded on 24.5.2005 to 27.5.2005.
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> 5. Thereafter, I carefully went through all the material that was collected. I then prepared the necessary sets of documents by getting them typed, xeroxed etc. After all the necessary sets of documents were ready, I personally checked the same and they were submitted to the Senior Inspector of Police, Kandivali (W) Police Station, on 30.5.2005 for the detention of the present detenu for further detenu action. The Senior Inspector of Police, Kandivali (W) Police Station,

carefully went through the papers and submitted the proposal for detention dated 30.5.2005 through proper channel.

. 6. It is stated that the Sr.P.I.Kandivali (W) Police Station, after carefully checking all the papers in this case forwarded the proposal of the detenu dated 30.5.2005 to the Deputy Commissioner of Police Zone-XI, Mumbai. The proposal and papers was carefully considered and scrutinised by various authorities at various levels and thereafter the entire material was placed before the Detaining Authority. (I crave leave to refer to and rely upon the affidavit of the detaining authority for period from the proposal till the issuance of the order of detention.

. I say that after the Additional Commissioner of Police (Crime) carefully perused the papers and gave his endorsement thereon, on 7.6.2005, all the papers were put up before the detaining authority. Thereafter, the detaining authority started carefully perusing all the papers.

. 6. I say that the detaining authority again carefully went through the proposal and all the papers and he was of the opinion that it was a fit case for detention of the detenu and he gave his endorsement to that effect on 10.6.2005. I say that the detaining authority carefully went through all the papers and the proposal and formulated the draft grounds of detention. Thereafter, on 11.6.2005, the papers were forwarded to Sr.P.I. P.C.B. C.I.D. Thereafter, all the appears were then forwarded to the Sponsoring Authority i.e. Kandivali (W) Police Station on the same day for the purpose of fair typing, for preparing the transaction of the documents in the language known to the

detenu for preparing the necessary sets of documents etc. It is stated that 12.6.2005 was holiday. It is submitted that there were in all 101 pages in the compilation of documents of the detenu. The said compilation of documents were translated in Hindi language which is the language known to the detenu.

. 7. After completing all the requirements i.e. translations, typing and zerox etc. I forwarded the proposal along with the necessary sets of documents as per procedure to the Senior P.I. P.C.B. C.I.D. on 21.6.2005. It is stated that 19.6.2005 was holiday.

. 8. I say that as stated earlier, the papers in this case were submitted on 21.6.2005. After receiving the papers, the Sr.P.I. P.C.B. C.I.D. carefully went through all the papers and gave his endorsement on 21.6.2005. Thereafter the papers were forwarded to Deputy Commissioner of Police (P) who gave his endorsement on 22.6.2005. Thereafter the papers were forwarded to the detaining authority. Thereafter the detaining authority once again carefully went through the proposal and the papers accompanying the same and finalised the grounds of detention and contemporaneously issued the order of detention on 22.6.2005. In view of the facts and circumstances of this case, it is denied that there is any delay in issuing the order of detention."

14. Looking to the detailed reply given by the detaining authority and the sponsoring authority we find that there is no delay in issuance of detention order. In the present case, the last incamera statement was recorded on 27.5.2005 and

the detention order is dated 22.6.2005. Obviously, delay will have to be computed from the date that the last material came to be known to the sponsoring authority. The last material in the present case is the statement of incamera witness 'D' which was recorded on 27.5.2005. The proposal in the present case is 30.5.2005 and as stated earlier, the order of detention was issued on 22.6.2005 i.e. within a period of almost three weeks from the submission of the proposal. Looking to these facts, we find that there is no delay at all in issuing the present order of detention.

15. Thereafter Mr.Tripathi submitted that the incident pertaining to C.R.No.5 of 2005 occurred on 19.1.2005. The detenu came to be granted bail in the said case on 29.1.2005, however, thereafter after the detenu was released on bail, the incamera statements came to be recorded in the month of May, 2005. The said statements have been recorded by the sponsoring authority in order to fill in the gap relating to delay in issuing the order of detention. Mr.Tripathi submitted that it was only because the detenu was successful in getting released on bail that these false statements were

got recorded by the sponsoring authority so that the detenu could be detained. Mr.Tripathi further submitted that the said incamera statements being recorded by the sponsoring authority in such a manner is a disturbing aspect of this case. In support of his submission, Mr.Tripathi has placed reliance on the decision of the Supreme Court in the case of **Pradip Nilkanth Paturkar Vs. S.Ramamurthi and others** reported in **1993 S.C.C. (Cri.) 392.** He has placed reliance on para no.13 which is as under:

> . "13. Coming to the case on hand, the detention order was passed after 5 months 8 days from the date of registration of the last case and more than 4 months from submission of the proposal. What disturbs our mind is that the statements from the witnesses. A to E were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him, that too in the later part of March, 1991. These statements are very much referred to in the grounds of detention and relied upon by the detaining authority along with the registration of the cases under the Act."

16. Mr.Tripathi further contended that recording of the incamera statements at such a belated stage would make them suspect and hence, reliance by the

detaining authority on the said incamera statements would be erroneous and on account of this the order of detention would be vitiated. In support of his contention, he has placed reliance on the decision in the case of **Mrs.Jainab Sale Mohammed Vs. M.N.Singh, Commissioner of Police and Ors.** reported in **2002 ALL MR (Cri) 2305** (to which one of us i.e. D.G.Deshpande,J. was party). He has placed reliance on para no.12 which is as under:

. "12. So far as the two in-camera statements are concerned, it may be noted that the last in-camera statement was recorded on 29.8.2001 whereas the order of detention came to be passed on 11.10.2001. The delay in passing of the detention order is unexplained. Crime No.89 of 2001 registered against detenu does not make out any case of the detenu having indulged in prejudicial activity affecting public order. The reliance placed on the two in camera statements for supporting the detention order as a link to connect the prejudicial activities as alleged in the aid C.R.No.98 of 2001 is wholly misplaced as the said C.R.No.98 of 2001 does not disclose any such prejudicial activity on the part of the detenu as to affect public order. In fact, statement of witnesses A & B seeking to make out the detenu to be a habitual offender indulging in extortion or the basis of incidents alleged to have taken place in May, 2001 and August, 2001 are themselves suspect as the statements were recorded after a considerable delay. There is no reason why the aid witnesses A & B or other

> witnesses to the alleged incident did not approach the police earlier to lodge their complaints. Clearly the incident of 10.5.2001 pursuant to which Crime No.89 of 2001 was registered cannot sustain the order of detention as the alleged acts of the detenu set out in the said C.R. cannot be said to be prejudicial to public order. In the absence of any criminal antecedents being registered against the detenu showing the detenu having indulged in extortion as a habitual offender, the two in camera statements recorded after a considerable delay cast doubts as to their genuineness. Therefore these two in camera statements cannot by themselves sustain the order of detention."

17. Mr.Tripathi has also submitted that recording of incamera statement almost after 3 to 4 months after the detenu came to be released on bail, would have an adverse impact on the detention order. In support of this contention, he has placed reliance on the decision in the case of **Asutin William Luis Pinto Vs. Commissioner of Police, Greater Mumbai and Ors.** reported in **2005 All MR (Cri) 28.** He has placed reliance on para nos. 6 and 8 which are reproduced below:

. "6. It appears that after the detenu was released on bail in C.R.No.119 of 2003 on 5.7.2003, the police recorded two in-camera statements. Statement of 'A' came to be recorded on 12.7.2003 and

statement of 'B' came to be recorded on 14.7.2003. Both of them referred to the incidents which had taken place in April, 2003 where the detenu and his associates are alleged to have been involved. Those incidents pertain to demands of hafta by giving threats at the point of deadly weapons. Charge sheet in CR no.119 of 2003 came to be filed on 11.8.2003.

. 8. In **Pradeep Nilkanth Paturkar's case (supra)** the Supreme Court was dealing with some what similar fact situation. In that case, the detention order was passed after five months and eight days from the date of registration of the last case and more than four months from submission of the proposal, and the in-camera statements of witnesses were obtained only after the detenu became successful in getting bail in all the prohibition cases registered against him. Those statements were very much referred to in the ground of detention and relied upon by the detaining authority along with the registration of the cases under the said Act. In that case, while setting aside the detention order on the ground of delay, the Supreme Court expressed its anguish about the fact that the statements of the witneses ere recorded only after the detenu became successful in getting the bail. Here also, the statements of witnesses have been recorded after the detenu availed of the bail facility on 2.7.2003. There is no explanation as to why the in-camera statements were not recorded even though the detenu was in custody from 1.5.2003 to 2.7.2003. Considering the fact that an incident clearly affecting the law and order has been cited as the first ground, in the facts of this case, in our opinion, these delayed statements have an adverse impact on the detention order. Moreover, we find that the proposal was submitted on 26.7.2003 and even the

> period between 26.7.2003 and 30.9.2003 has also not been properly explained. The cumulative effect of this is that the detention order is also vitiated on account of delay in issuing of the order. In the result, therefore, the impugned order will have to be set aside. Hence, the following order".
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> [EMPHASIS SUPPLIED]

18. Mrs.Pai, the learned A.P.P. on the other hand, has submitted that the decision in the case of **Pradip Nilkanth Paturkar (supra),** has been considered by this Court in the case of **Smt.Zebunnisa Abdul Majid Vs. M.N.Singh reported in 2001 Cri.L.J. 2759**. This Court in the said case in para no.28, held that:

. "Only one contention was pressed before this Court, namely delay in passing the detention order. The Supreme Court while dealing with the aspect of delay observed that out of five criminal cases three were of the year 1990 and the remaining two were dated 5.1.1991 and 26.2.1991. In respect of the five incidents, witnesses A to E were examined in the later part of March, 1991, that is long after the detenu had been released on bail in all the five criminal cases."

. This Court further observed that:

. "It is against this background that the

> Supreme Court observed that the fact that the statements from the witnesses were obtained only after the detenu was successful in getting bail in cases registered against him, that too in the later part of March, 1991 is a disturbing feature."

19. In Zebunissas case this Court negatived the contention made by the learned counsel for the petitioner that it is a disturbing feature in cases where the statements of incamera witnesses have been recorded after the detenu was released on bail. The Court held that there is no delay in issuing the order of detention in the case of **Zebunissa Abdul Majid (supra)**. Secondly, in Zebunissas case in respect of incamera statements being belatedly recorded, this Court has categorically held thus:

> . "The Supreme Court has not laid down that <u>in all cases where statements are recorded after the detenu is released on bail they should be viewed with suspicion.</u> The observation of the Supreme Court are in the context of delay in issuing the detention order and are confined to the facts of that case. In any event this aspect of the matter was clearly evident from record which was before the detaining authority. After considering all aspects of the matter in their proper perspective the detaining authority has expressly stated

> in the affidavit that he was satisfied about the truthfulness of the said statements. Such satisfaction cannot be questioned."

20. Similarly in the present case, the detaining authority after considering all the aspects of the matter, was subjectively satisfied about the genuineness of the material placed before him and that said material was sufficient to reach a subjective satisfaction that it was necessary to detain the detenu for the maintenance of public order. Moreover, it would be pertinent to note that the decision in the case of **Pradip Nilkanth Paturkar (supra)**, was rendered in the year 1992. At that time, incamera statements which were recorded by the sponsoring authority were not verified by an Assistant Commissioner of Police as is done nowadays. All the incamera statements recorded by the sponsoring authority nowadays are verified by the Officer of the rank of the Assistant Commissioner of Police. The Assistant Commissioner of Police verifies the identity of the person making the statement i.e. the incamera witnesses are indeed real persons and not fictitious persons. After making enquiries with

the incamera witnesses when the Assistant Commissioner of Police is satisfied about the genuineness of the statement made by the witness, he certifies the said incamera statement. The very purpose of an officer of the rank of Assistant Commissioner of Police verifying the statements of incamera witnesses is to lend assurance that the statements can be safely relied upon. Unless the incamera witnesses had indeed suffered at the hands of the detenu, there would be no reason for these persons to come forward and give statements against the detenu. In our view, verification of incamera witnesses by an Officer of the rank of the Assistant Commissioner of Police would provide a sufficient check & would lend sufficient assurance that the statements are genuine.

21. Moreover, it is to be kept in mind that the statements of incamera witnesses are not easily available. It is only when witnesses are taken into confidence that some of them are willing to make a statement. When the sponsoring authority is able to gather 2-3 persons who are willing to give their statements incamera, then these witnesses are called for recording their statements. It is in

these circumstances, it is seen that statements of incamera witnesses are recorded invariably on the same day or recorded within a few days of one another. In the present case also, all the incamera witnesses have been verified by an Officer of the rank of the Assistant Commissioner of Police. This verification, to our mind, is sufficient to remove any seed of doubt or any suspicion in respect of the incamera statements.

22. As far as observations of this Court in the case of **Jainab Sale Mohammed (supra)** and **Austin William Luis Pinto (supra)**, are concerned, it appears that it was not brought to the notice of the Court that statements of incamera witnesses were verified by an Assistant Commissioner of Police in the said two cases. Hence, this aspect was not taken into consideration by the Court. Moreover, as far as the case of **Jainab Sale Mohammed** is concerned, the delay in passing the order of detention from the time of submission of proposal, till the time of passing of order was not properly unexplained. Moreover, in the said case, it was observed that there was only one C.R. and the incident pertaining to the said C.R. could not

be said to be prejudicial to public order. It was in the said facts and circumstances of that case that the observations were made that the incamera statements could not be relied upon.

23. As far as the case of **Austin William Luis Pinto** is concerned, in the said case, the detention order was not quashed only on the ground of delay in recording the statements of incamera witnesses but it was quashed as a cumulative result of many factors. One of the factors was that proposal in the said case was forwarded on 26.7.2003 and the Court observed that the period between 26.7.2003 and 30.9.2003 had not been properly explained. In fact the Court has further observed that the 'cumulative effect' of all the factors is that detention order is vitiated. Moreover, in the said case, it is observed that there is no explanation as to why the incamera statements were not recorded earlier. However, in the present case, an explanation has been given by the Respondents as to why the incamera statements were not recorded earlier. The detenu was arrested on 19.1.2005. The detaining authority in its return as well as sponsoring authority has stated that after the

arrest of the detenu further investigation was carried out. We have noticed that the detenu came to be released on bail within ten days of his arrest i.e. 29.1.2005. Obviously, the investigation in the said case would not be over within ten days and the investigation would continue even beyond 29.1.2005. In the return, it is stated that "during the course of enquiry, it was learnt that even though the detenu had committed several offences, the witnesses were not willing to come forward to make any complaint openly against the detenu due to reign of terror which was created by the detenu and his associates. It was only when assurances were given to the witnesses that their names and identifying particulars would not be disclosed that 4 witnesses came forward to give their statements, these statements were recorded on 24.5.2005, 25.5.2005, 26.5.2005 and 27.5.2005".

. Obviously, when the sponsoring authority located some persons who had suffered at the hands of detenu, these witnesses were not immediately willing to give their statements against the detenu. Assurances had to be given to these

witnesses and only thereafter they became willing to give their statements. It was only after giving assurances that these witnesses came forward to give their statements. Thus, we find that the detaining authority as well as sponsoring authority have explained the reasons as to why the incamera statements were recorded in May 2005. No such explanation seems to have been pointed out by the prosecution in the case of **Austin William Luis Pinto**. Thus, the facts in the case of **Austin William Luis Pinto** cannot be equated with those in the present case. In this view of the matter, we find no merit in this ground. Moreover, the learned A.P.P. has also placed reliance on the case of Deepak Govind Murudkar reported in **2001 ALL MR (Cri.) 357** wherein it is held that delay has to be computed from date of last incamera statement and not from date of C.R. In view of all these facts and the legal position, this ground too fails.

24. The last ground which is pleaded by Mr.Tripathi is ground ‘D’ which reads as under:

. "D. The Petitioner says and submits that a representation of the detenu was sent to the Hon'ble Governor of Maharashtra State on 28.07.2005 through the Superintendent Nasik Road Central Prison at Nasik. The Petitioner says and submits that so far the detenu has not received any communication as regards to the consideration of his representation by the said authority. The Jail Superintendent Nasik Road Central Prison is called upon to inform this Hon'ble Court as to when the said representation of the detenu is forwarded to the Hon'ble Governor of Maharashtra. The Petitioner says and submits that this representation was sent to the head of the State with bonafide intention because other representations of the detenu are not considered by the other authorities. The detenu being an Army Personnel wanted that the head of the State should consider his representation even though no such direction given in the grounds of detention. Moreover, as held by the Supreme Court that State Government means the Governor of State as per General Clauses Act and the said authority is entitled to consider the representation of a detenu. The Petitioner says and submits that the State Government has delayed in considering the representation of the detenu. The continued detention is illegal and bad in law. The order of detention is illegal and bad in law, ought to be revoked and set aside."

25. Mr.Tripathi submitted that there is considerable delay by the State in deciding the representation preferred by the detenu to the Governor. Mr.Tripathi submitted that looking to the details furnished in the affidavit filed by the

Under Secretary to the Government of Maharashtra in relation to the representation addressed to the Governor, it is seen that there is inordinate delay in deciding the said representation. He has stated that the said representation was received from the Governor by the Department on 8.8.2005. However, the representation came to be rejected on 3.9.2005, hence there is considerable delay in deciding the representation and the said delay has not been explained. Mr.Tripathi contended that on this ground alone the detention order is liable to be quashed.

26. Perusal of grounds furnished to the detenu and particularly para nos. 7, 8 and 10 thereof, wherein the detenu was informed about the right to make representation, clearly reflects the authorities to whom the representation was required to be addressed. Intimation in that regard is as under:

. "7. I further inform you that, pending the approval of this detention order under section 3(3) by the State Government, you have a right to make a representation to the detaining authority i.e. Commissioner of Police,

Brihan Mumbai, against the order of detention. Should you wish to make such representation, you should address it to the Commissioner of Police, Brihan Mumbai c/o Deputy Commissioner of Police (Preventive), Crime Branch, 3rd floor Shivaji market, M.R.A. Marg, Mumbai-400001, through the Superintendent of the Jail, where you are destined. On approval of the detention order by the State Government under Section 3(3), the right to make a representation to the detaining authority, is automatically extinguished.

. 8. You are, further informed that, you have right to make a representation to the State Government against the detention order and that, you shall be afforded the earliest opportunity to make such a representation. Should you wish to make such representation, you should address it to the Secretary to Government of Maharashtra (Preventive Detention), Home Department (Special), Mantralaya, Mumbai-400032 and submit it through the Superintendent of the Jail, where you have been detained.

. 10. You are, further informed that if you wish to make any representation to the Advisory Board against the detention order, you may do so and address it to the Chairman, Advisory Board, constituted under Section 9 of the Maharashtra Prevention of Dangerous Activities of Slumlord, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Mah.Act No.LV of 1981) (Amendment 1996) c/o Desk Officer, Desk-10, Home Department (Special) Mantralaya, Mumbai-400032 and submit it through the Superintendent of the jail, where you are detained."

27. In the grounds of detention, the detenu has been clearly informed the designation of the

authority to whom the representation was required to be addressed and it also discloses the address of the said authority. When the three authorities to whom representation could be addressed, have been clearly stated in the grounds of detention, it was clearly required of the detenu to address his representation to any or all of the authorities mentioned in the grounds of detention. It is not left to the discretion of the detenu to present his representation to any authority/authorities of his choice.

28. The legal position is that the detenu is certainly entitled to make a representation but he cannot make a representation to any authority of his choice. On the contrary, the requirement of law is that the detenu should make his representation only to the authorities stated in the grounds of detention. The detenu is expected to address his representation to only such an authority as is mentioned in the grounds of detention and to submit the same or to get submitted at the address mentioned in the grounds of detention. If the detenu instead of submitting representation to the authorities mentioned in the

grounds of detention, submits the same to any other authority which consequently results in delay in considering the representation even by the authorities mentioned in the grounds of detention, in such a case, it would not create any right in favour of the detenu to contend that the delay has caused prejudice to him nor would it affect the detention in any manner. In the present case, the delay has occurred on account of the act on the part of the detenu himself of sending it to the wrong authority. Hence, the same cannot affect the validity of the detention or continuation thereof. Nor it can be said that any occasion would arise to blame the authorities for failure to comply with their obligations.

29. It is true that in the present case, the representation of the detenu preferred to the Governor was received by the Department on 8.8.2005 and the representation came to be rejected on 3.9.2005. As stated earlier, representation was addressed to the Governor. In such case, when such an application is received addressed to the Governor in the office of the Home Department, confusion is bound to arise in the minds of the

lower staff who receive such an application. In such situation, there was every likelihood of the office of the Home Department taking it as a routine letter/application and not forwarding it forthwith to the concerned authorities. On account of this confusion, there would be deliberation between the staff members and therefore it would take some time for the staff to realize that the application is in the nature of representation and the same should be dealt with and processed like a regular representation. Hence, delay is bound to occur on account of addressing the representation to the wrong authority. In our view, an unscrupulous detenu cannot be allowed to create a smoke-screen to take the authorities by surprise by acting surreptitiously or with ulterior motives. There appears to be a rising trend to create confusion and reap undeserved benefit of adopting such dubious device of addressing the representations to the wrong authorities or to the authorities not mentioned in the grounds of detention. If really, the detenu was interested in getting an expeditious consideration or disposal of his representation, he ought to have honestly approached the specified authorities and should not

adopt any dubious devices with the aim of deliberately creating a situation for delay in consideration of his representation and cry for relief on his own manipulated grounds by addressing his representation to an authority which is not directly or immediately concerned with consideration of such representation. Though, the detenu has alleged infraction of personal liberty, we find that he has acted in a manner which is more aimed at deflecting the course of justice than for protection of his personal right. If a fraud has been practised or perpetrated, that may in a given case, nullify the cherished goal of protecting personal liberty. The Courts are not only there to protect the individual right of a person but the Court has to balance individual rights and the interest of the nation, as well.

30. In the case of **Union of India Vs. Paul Manickam and another** reported in **(2003) 8 S.C.C. 342,** the detenu had preferred representation to the President of India. There was delay in considering the said representation. In the said case, the Apex Court held that while dealing with *habeas corpus* application, if the Court is satisfied that

an attempt has been made to deflect the course of justice by letting loose red herrings, the Court has to take serious note of unclean approach. The Apex Court took a serious view of the fact that the detenu had preferred a representation to the President of India instead of the authorities mentioned in the grounds of detention and held that this is a dubious device to create a situation for delay in consideration of the representation and then seek relief on that ground.

31. In the case of **Phillippa Anne Duke Vs. State of Tamil Nadu and others** reported in **AIR 1982 S.C. 1178,** the representations were preferred on behalf of the detenu to the Prime Minister and Central Minister. The Apex Court held that "it is not possible to treat the representations from whatever source addressed to whomsoever officer of one or other department of the Government as a representation to the Government requiring the appropriate authority under the Act to consider the matter". The said case was under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA Act) in which case the appropriate authority to consider the

representation was the ‘Central Government’. However, the representation had been preferred to the Prime Minister. The Apex Court held that "the representation made to the Prime Minister could not be said to be a representation to the Central Government which was required to be dealt with in the manner provided by the Act.

32. In this view of the matter, we are of the opinion that the petitioner cannot be allowed to take advantage of his own wrong and hence, even if there is delay in considering the said representation, the detenu cannot be allowed to take advantage of the same and get the order of detention quashed on that ground.

33. Mr.Tripathi contended that the representation was sent to the Government with the bonafide intention because other representations of the detenu are not considered by the other authorities. He further submitted that the detenu being an army personnel wanted that the Head of the State should consider his representation even though no such directions were given in the grounds of detention. In fact, in the present case, the representation of

the detenu were considered by the authorities. The detenu being an army personnel would know that if he wishes to have his representation considered expeditiously it ought to be made to the authorities mentioned in the grounds of detention. In the present case, we find that the detenu has purposely tried to create a smoke-screen to take the authorities by surprise and we find that an attempt has been made to deflect the course of justice by letting loose red herrings. In our opinion, if the detenu has preferred the representation to the authority not mentioned in the grounds of detention, the detenu cannot raise any grievance about the delay in consideration of the representation by any authorities. The detenu being an army personnel, ought not to have resorted to such a tactic. Even as far as the detenu who is a lay person is concerned, it is expected of the detenu to prefer a representation to the authorities mentioned in the grounds of detention if the detenu wants his representation to be considered expeditiously. If the representation is sent to the wrong person or to a person not authorised to receive it or the authorities not mentioned in the grounds of detention, none of the

authorities concerned can be held responsible if any delay is occasioned on account of such an act of the detenu of addressing it to an unauthorised person or wrong person.

34. At this stage, Mr.Tripathi contended that after the representation reached the concerned authority i.e. Additional Chief Secretary (Home) on 2.9.2005, thereafter the action taken on representation would have to be explained. In support of this contention, he has placed reliance on the decision of the Supreme Court in the case of **Union of India and another Vs. Chaya Ghoshal (Smt) and another** reported in **(2006) 1 S.C.C. 257.** However, even after this contention was taken into consideration, we do not find any merit in the said contention. We have noticed that the representation to the Governor was received on 3.9.2005 by the concerned authority who is directly concerned for consideration of the representation i.e. the Additional Chief Secretary (Home) whose designation and address has also been given in the grounds of detention and the representation came to be rejected by him on the same day i.e. 3.9.2005. In this view of the matter, we find that there is

no delay at all by the concerned and rightful authority in disposing of the representation made by the detenu. Thus, this contention also fails.

35. In the result, this petition fails and rule is discharged.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]